IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 617

ESTATE OF WALTER C. BURR, Deceased, JEROME P. BURR and CLINTON S. BURR, Executors,

Petitioners,

v.

COMMISSONER OF INTERNAL REVENUE.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

SUPREME PRINTING CO., INC., 41 MURRAY STREET, N. Y., BARCLAY 7-0349
49

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 617

ESTATE OF WALTER C. BURR, Deceased, JEROME P. BURR and CLINTON S. BURR, Executors,

Petitioners,

v.

COMMISSONER OF INTERNAL REVENUE.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

As was stated in the decision of the Circuit Court of Appeals, there has never been a decision on the particular issue involved herein (R. pp. 80-4). The absence of any decision is one of the compelling reasons urged by the Petitioners, as requiring a decision by the Supreme Court. Because of the absence of a decision on the point herein, all argument is necessarily by analogy and deduction. The Statement of the Respondent that the cases cited by the Petitioners are distinguishable (p. 7 of Respdt's Br.) is meaningless, since the same comment can be made concerning the cases cited by the Respondent. In fact, the very fact that there has been no decision, as specifically and

clearly stated by the Circuit Court of Appeals, on a basic question, of great importance to the public, requires a review by the Supreme Court.

The Respondent contends that conceding the Petitioners' contention that after the assignment of the insurance policies the sons (assignees) became the absolute owners, the result would not be changed. That argument is contrary to the intimation of the Circuit Court of Appeals that if the sons had surrendered the policies for cash, the taxable result would be different. The Respondent then cites cases to support that contention, whereas, the Circuit Court of Appeals specifically stated that there has been no decision on the subject and clearly intimates that if the policies had been cashed in by the sons, the proceeds would not be taxable as part of the gross estate. In other words, the Respondent agrees with the result of the decision, but when it suits its purposes, disagrees with the reasoning of the Circuit Court of Appeals.

The Circuit Court of Appeals also stated that it was not necessary to consider the question of a possible reversion to sustain the tax. At page 6 of the Respondent's brief, Respondent argues that the transfers were not absolute, because the decedent retained the annuity. That contention is contrary to the intimation of the Circuit Court of Appeals that if the policies had been surrendered for cash, the result would be different.

The Respondent then demonstrates the weakness of its position and the necessity for a review by the Supreme Court by advancing an alternate contention that there was a possible reversion, a point not considered by the Circuit Court of Appeals, and states that the Respondent does not abandon that point should certiorari be granted.

The Respondent did not answer the Petitioners' contention that the decision of the Circuit Court of Appeals is a declaration to all assignees of similar life insurance policies, to surrender their policies for cash in the lifetime of the assignor policyholder, or be taxed.

The purpose of the Revenue Act is to collect revenue, so that if the assignees cash in the policies, taxes would not be paid and no revenue paid anyway. Certainly, it is not the public policy to encourage the surrender and cashing of insurance policies to avoid taxation. It is not sound public policy to tax or not, in accordance with whether a policy has been surrendered or not surrendered and cashed.

As stated in Petitioners' brief and reply brief, there is a substantial question, which also involves the public, which has not been decided by the highest court; and the Petition should be granted.

Respectfully submitted,

ALEXANDER HALPERN,
HARRY E. RATNER,
Attorneys for Petitioners.

November 1946.